

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District of Massachusetts	
Name (under which you were convicted): <b>Xiomara Cheng</b>		Docket or Case No.: <b>1:01 CR 10 344-001</b>	
Place of Confinement: <b>Danbury, Connecticut</b>		Prisoner No.: <b>23872038.Cheng</b>	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) <b>v. Xiomara Cheng</b>	

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MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court of Massachusetts  
\_\_\_\_\_  
\_\_\_\_\_
- (b) Criminal docket or case number (if you know): 1:01 CR 10344-001
2. (a) Date of the judgment of conviction (if you know): April 1, 2003  
\_\_\_\_\_  
\_\_\_\_\_
- (b) Date of sentencing: April 1, 2003
3. Length of sentence: Thirty-three (33) months
4. Nature of crime (all counts): Two count indictment charging Xiomara Cheng with money laundering, in violation of Title 18 U.S.C § 1956  
(a) (3)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. (a) What was your plea? (Check one)  
(1) Not guilty ☐      (2) Guilty ☒      (3) Nolo contendere (no contest) ☐  
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? Pled guilty to both Count One and Count Two of the indictment  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. If you went to trial, what kind of trial did you have? (Check one)      Jury ☐      Judge only ☐  
N/A, No trial

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7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:
- (a) Name of court: United States of Appeals for the First Circuit
- (b) Docket or case number (if you know): No. 03-1507
- (c) Result: Appeal was dismissed for level of jurisdiction
- (d) Date of result (if you know): August 4, 2004
- (e) Citation to the case (if you know): Not known
- (f) Grounds raised: The court erred when it concluded that as a  
matter of law (rather than discretion) it could not  
downward depart on the facts here on the ground of  
extraordinary pre-sentence rehabilitation
- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒
- If "Yes," answer the following:
- (1) Docket or case number (if you know): \_\_\_\_\_
- (2) Result: \_\_\_\_\_
- (3) Date of result (if you know): \_\_\_\_\_
- (4) Citation to the case (if you know): \_\_\_\_\_
- (5) Grounds raised: \_\_\_\_\_
10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?
- Yes ☐ No ☒
11. If your answer to Question 10 was "Yes," give the following information:
- (a) (1) Name of court: \_\_\_\_\_
- (2) Docket or case number (if you know): \_\_\_\_\_
- (3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Aggravating enhancements set forth in the United States guidelines were not specifically pled in her indictment

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Count One and Count Two both charge money laundering in violation of 18 U.S.C. §1956...with the intent to promote the the carrying on specified unlawful activity, to wit, the possession and distribution of a controlled substance and with the intent to conceal or disguise the release, location, source, ownership, or control of property believed to be the proceeds of said specified unlawful activity. She pled guilty to laundry involving drugs. The defendant should not have had a three level adjustment added to her sentence for the exact same behavior. If the defendant was not given the three level adjustment she would have qualified for the "Shock Treatment (continued see attachment)

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: The decision in the United States v. Booker had not been decided by the United States Supreme Court at the time of my plea and appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_  
\_\_\_\_\_

of her sentence. She may also have qualified for home confinement, halfway house or some combination of sentence that would have resulted in a sentence of less than thirty-three months. The court could also depart downward to a lower offense level based on a number of reasons including family issues.

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

GROUND TWO: Aggravated enhancement should not have been applied or should have been listed within the indictment for a jury to decide.  
 (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
The court should not have added the three level increase pursuant to U.S.S.G. §2S1.1 (b) (1) to her base offense level of 20.  
The aggravating enhancement as set forth in the United States Presentencing Report on page 6 paragraph 31 was not specifically pled in her indictment. The defendant was sentenced for uncharged launder of \$30,000 on May 19, 2000, that was not pled in her indictment. The judge also considered discussion of her transportation up to 100,000 that were not charged in the  
 (continued see attachment)

that were not charged in the indictment. The Defendant should have had the enhancement pled within the indictment rather than having the court decide whether it should have been applied after the defendant had pled guilty to the indictment.

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(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: The decision in the United States v. Booker had not been decided by the United States Supreme Court at the time of my plea and appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

GROUND THREE: The three level enhancement should not have been applied (U.S.S.G. § 2 § 1.1 (b) (1))

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): The three level enhancement should not have been applied since there was no evidence to show that the defendant knew the proceeds were from drug sales. The defendant specifically told the informant that she was not involved in the drug business when he ordered her to get some drugs for him. The sentencing judge erroneously considered facts that the proceeds were drug sales and enhanced the sentence by levels.

\_\_\_\_\_

\_\_\_\_\_

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: The decision in United States v. Booker had not been decided by the United States Supreme Court at the time of my plea and appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

GROUND FOUR: Family Circumstances and pre-sentence rehabilitation

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Since the defendant's sentencing hearing and during the pendency  
of her appeal the defendant gave birth to her second child, on  
July 22, 2004. The defendant began serving her sentence in  
September 2004. The defendant had no prior record and a strong  
work history. She was arrested on September 7, 2001, and never  
violated the terms of the conditions of her pre-trial release  
She was on electronic monitoring for approximately three years.  
The defendant had become rehabilitated and those facts pursuant  
(continued see attached)

to the United States v. Booker would have justified a downward departure.

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: The United States Supreme Court had bnot heard or decided the decision in United States v. Booker at the time the defendant pled guilty or had been sentenced.

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: NO.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒  
If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: William Keefe BBO # 556817

309 Centre Street Jamaica Plain, MA 02130

(b) At arraignment and plea: William Keefe

(c) At trial: n/a

(d) At sentencing: William Keefe

(e) On appeal: Robert L. Sheketoff BBO# 457340

One McKinley Square Boston, MA 02109

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: \_\_\_\_\_


(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

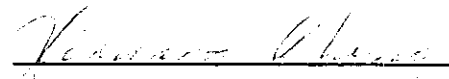
Therefore, movant asks that the Court grant the following relief: Resentence  
the defendant on Count One and Count Two

or any other relief to which movant may be entitled.

  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct  
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on \_\_\_\_\_  
\_\_\_\_\_ (month, date, year).

Executed (signed) on 3-3-05 (date).

  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not  
signing this motion. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN FORMA PAUPERIS DECLARATION

\_\_\_\_\_  
[Insert appropriate court]

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